APPENDIX

Quotation from *McAnally* v. *Little River Drainage District, et al,* 325 Mo. 348, 28 S. W. (2d) 650:—

"The question involves the construction of sections of the statute authorizing the organization of drainage districts by circuit courts. Reference to sections will be understood to mean R. S. 1919.

"The financial foundation of the district is provided in section 4394, which follows:

" 'After the list of lands and other property, with the assessed benefits and the decree and judgment of court, have been filed in the office of the county recorder as provided in section 4392 of this article, then the board of supervisors shall, without any unnecessary delay, levy a tax of such portion of said benefits on all lands, railroad and other property in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements as shown in said 'plan of reclamation' and in carrying out the objects of said district, and plus ten per cent of said total amount for emergencies. The said tax shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as provided herein and hereafter, then the amount of the interest (as estimated by said board of supervisors) which will accrue on such bonds shall be included and added to the said tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making said improvements are or are not equal

to or in excess of the benefits assessed. The secretary of the board of supervisors, as soon as said total tax is levied, shall, at the expense of the district, prepare a list of all taxes levied, in the form of a well bound book, which shall be indorsed and named 'drainage tax record of ..... drainage district .....', which indorsement shall also be printed or written at the top of each page in said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said secretary.'

> [This section is identical with Section 17 of Chapter 6458, Florida Acts, 1913; Section 1114 Revised General Statutes, 1920; Section 1467 Compiled General Laws, 1927; Section 298.36 Florida Statutes, 1941, insofar as pertinent to liens in favor of the District and the accrual thereof.]

"In Elsberry Drainage District v. Winkelmeyer, 278 Mo. 268, 212 S. W. 893, we held the levy under this section was not self-enforcing and that it was only 'a step necessarily precedent' to the levy and collection of the district taxes.

"This levy rests on the engineers' estimate of the cost of reclaiming the land and is only an estimate of the taxes to be collected. If found to be insufficient, it may be increased within the amount assessed as benefits. Section 4418.

> [This section, except for variations of no material bearing upon the question now under consideration, is the same as Section 41, Chapter 6458, Acts of 1913; Section 1138 Revised General Statutes, 1920; Section 1493, Compiled General Laws, 1927.]

It is made before the construction contracts are let, before bonds are issued, and is only notice to the owners of land within the district and to all that said lands are subject to taxation for purposes of the district. If the undertaking should collapse before an annual levy, no taxes may be collected.

"In determining the question, the above section should be considered with section 4395, which in part follows:

" 'The said board of supervisors shall each year thereafter determine, order and levy the amount of the annual installment of the total taxes levied under the preceding section, which shall become due and be collected during said year at the same time that state and county taxes are due and collected, which said annual installment and levy shall be evidenced and certified by the said board not later than September 1st of each year to the collector of revenue of each county in which lands and other property of said district are situate. * * *'

> [The same language is in the Florida law, Section 18, Chapter 6458, Acts of 1913; Section 1115 Revised General Statutes, 1920; Section 1468, Compiled General Laws, 1927; Section 298.37 Florida Statutes, 1941.]

"The lien of the state for taxes is established by an assessment of all land for that purpose. Section 12757. However, said lien does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax. Likewise, the lien of a drainage district annually accrues and become a fixed incumbrance at the time the board of supervisors 'determine, order and levy the amount of the annual installment of the total taxes levied under' section 4395. The intention of the Legis-

lature could not have been otherwise, for, as argued by respondents: 'Can a lien exist until the amount of the charge has been determined? Can a charge be cancelled until it has been created? Can a sale of land in 1926 destroy a tax not to be determined and levied until in 1928? Can anything be destroyed prior to its creation? A landowner cannot pay the annual tax until after it has been determined, ordered and levied and certified to the Collector. How can it be contended that it is a lien until the owner of the property charged had an opportunity to discharge the so-called lien?"

"Answering this, appellant directs attention to section 4399, which follows:

" 'All drainage taxes provided for in this article, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from date of filing the certificate hereinafter described in the office of the recorder of deeds for the county wherein the lands and properties are situate, until paid, constitute a lien, to which only the lien of the state for general state, county, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this article. Such lien shall be evidenced by a certificate substantially in the following form, to wit:' [Then follows the form of the certificate.]

[The corresponding provisions in the Florida law are to be found in Section 22, Chapter 6458, Acts of 1913; Section 1119, Revised General Statutes, 1920; Section 1472, Compiled General Laws, 1927; and Section 298.41, Florida Statutes, 1941.]

"Under this section when an annual installment tax (section 4395) and an annual maintenance tax (section 4419)

> [Corresponding provisions in the Florida law are to be found in Section 42 of Chapter 6458, Acts of 1913; Section 1139, Revised General Statutes, 1920; Section 1496, Compiled General Laws, 1927; Section 298.54, Florida Statutes, 1941. The variations therein found are not material to the case now under consideration.]

are levied, the liens attach as of the date of filing the certificate of levy of the estimated total tax (Section 4394) in the office of the recorder of deeds. But the lien does not accrue until an annual levy is made. It follows that at the time appellant purchased the land, the owner held title free of, but subject to, the lien of future installments of the estimated total tax."

Excerpt from Sec. 2, Chapter 12,040, Laws of Florida, Acts of 1927, later Section 1472 Compiled General Laws of 1927, Sec. 298.41 Florida Statutes, 1941:—

"All drainage taxes provided for in this Article (Chapter), together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien of equal dignity with the liens for State and County taxes, and other taxes of equal dignity with State and County taxes, upon all the lands against which such taxes shall be levied as is provided in this Article (Chapter) . . . . . ."